

**REMARKS**

This Response is submitted in reply to the Final Office Action, dated September 14, 2011 ("Final Office Action") and the Advisory Action ("Advisory Action"), dated January 13, 2012. This Response is submitted together with a Request for Continued Examination (RCE), whereby Applicant's previous Notice of Appeal is withdrawn. As modified by the Advisory Action, Applicant believes the issues remaining are as follows:

- the Drawings are disapproved because Figures 1A and 3 are labeled as "amended"; and
- claims 1, 2 and 4-26 are rejected as being based upon a defective reissue declaration under 35 U.S.C. § 251.

Claim 3 having been cancelled, claims 1, 2 and 4-26 are pending.

The Examiner disapproved the Drawings received on June 7, 2011 as not in compliance with 37 C.F.R. § 1.173 – specifically, the Examiner points to the Figures 1A and 3 being labeled as "amended" (see, e.g., Final Office Action, p. 2). Applicant respectfully disagrees.

In the Final Office Action, although alleging non-compliance with 37 C.F.R. § 1.173, the Examiner actually cites to 37 C.F.R. § 1.121 for the prohibition against labeling amended figures as "amended." Section 1.121 does not govern

amendments in reissue applications. The applicable language of § 1.173 actually requires:

(3) *Drawings*. One or more patent drawings shall be amended in the following manner: Any changes to a patent drawing must be submitted as a replacement sheet of drawings which shall be an attachment to the amendment document. Any replacement sheet of drawings must be in compliance with § 1.84 and shall include all of the figures appearing on the original version of the sheet, even if only one figure is amended. ***Amended figures must be identified as "Amended,"*** and any added figure must be identified as "New." In the event that a figure is canceled, the figure must be surrounded by brackets and identified as "Canceled." All changes to the drawing(s) shall be explained, in detail, beginning on a separate sheet accompanying the papers including the amendment to the drawings. (37 C.F.R. § 1.173(b)(3) – ***emphasis*** added.)

As is clearly seen from the foregoing, Applicant's labeling of Figures is not improper, but actually *required* by the applicable regulation. The basis for the disapproval is clearly contrary to the proper regulation, and the drawings should be approved and entered.

The Examiner is also continuing to object to the presentation of the text of claims that were not amended or added by the latest amendment. Applicant respectfully submits that there is no prohibition against presenting the text of unamended claims, either in the applicable regulations or in the MPEP.

The manner of making amendments to claims in a reissue application is governed by 37 C.F.R. § 1.173(b)(2). For ease of reference, this rule is reproduced below:

(2) *Claims*. An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by

such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," *etc.*, should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim.

As can be seen, this regulation *requires* the presentation of text for claims being changed by an amendment (which applicant has done), and requires a subsequent rule be followed for marking changes, but nowhere forbids Applicant from presenting –unmarked and without a parenthetical expression following the claim number – the original claims.

If the Examiner is aware of some other statutory or regulatory authority that actually forbids Applicant from presenting the text of original patent claims (as opposed to merely requiring that the presentation of the text of claims being amended), the Examiner is respectfully requested to cite the same. Otherwise, this objection must be withdrawn and the claim amendments entered.

Additionally, the claims were rejected based on the allegation of an insufficient reissue declaration. Specifically, the Examiner asserts that the declaration is defective because "it does not explain why the specification or drawing was defective." (Advisory Action) Applicant respectfully submits that making this requirement of a Supplemental Reissue Declaration is improper.

As an initial matter, the reissue declaration is only required to specifically state *at least one* error that is relied on as the basis for reissue – there is no requirement

to explain *every* error that is ultimately corrected. (See 37 C.F.R. § 1.175; see also, MPEP 1414.II.(B).) At least one error that was corrected by this reissue was identified, *at least* in the supplemental reissue declaration dated July 9<sup>th</sup>, 2003 – which at least one error is still properly relied upon (namely, the adding of additional dependent claims because the original patent claims less than Applicant had a right to).

Having already made an acceptable reissue declaration, the requirement with respect to subsequent errors is governed by 37 C.F.R. § 1.175(b), which simply requires a statement that such errors arose without deceptive intent. A statement that "All errors corrected in this reissue application arose without any deceptive intent on the part of the applicant" was included in the latest supplemental declaration (and is, in fact, pre-printed on the PTO/SB/51 form that was used for this purpose).

Thus, there is no statutory or regulatory requirement that Applicant's latest supplemental reissue declaration explain specific errors in the specification or drawings. Thus, the Examiner's rejection of the pending claims on this basis is improper, and should be withdrawn.

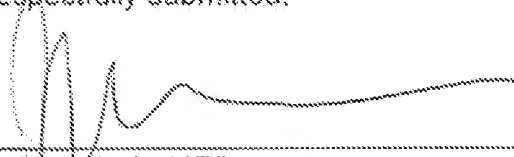
Having addressed each and every issue remaining after the Advisory Action, Applicant respectfully requests that the previous amendments be entered, and that the application, as amended, be allowed.

In re Patent Application of  
**ELMER**  
Serial No. 10/098,648  
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Beyond those fees already submitted herewith, Applicant believes no additional fees are due in connection with this Response. If any additional fees are deemed necessary, authorization is granted to charge any such fees to Deposit Account No. 01-0484.

Respectfully submitted,



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**STATUS OF CLAIMS**

Claims 1 and 2	-	pending
Claim 3	-	cancelled
Claims 4-26	-	pending